IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

CMA.No. 157 of 2001()

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AGAINST THE ORDER IN IA. 701 /1999 IN
AS.14/1999 of DISTRICT COURT, PATHANAMTHITTA

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IA NOS.713 & 714 OF 2000 IN A.S.NO.14/1999 OF DISTRICT COURT, PATHANAMTHITTA.

OS.503/1996 of MUNSIFF COURT,PATHANAMTHITTA

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APPELLANT/APPELLANT/PLAINTIFF:

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KARTHIYAYANI KAMALAMMA, PUTHIYA VEEDU, ULLANNUR, KULANADA, ADOOR.

BY ADV. SRI.V.G.ARUN

RESPONDENTS/RESPONDENTS/DEFENDANTS:

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1. KARTHIYAYANI PONNAMMA, GOPI VILASOM VEEDU, KALLIKODE, THRIKKUNNAPUZHA, KARTHIKAPALLY.

2. NARAYANAN RAMANUJAN, THADAVILA PUTHEN VEEDU, PANNIVIZHA, ADOOR.

3. KARTHIYAYANI THULASEEBHAI, CHAMALIL VEEDU, NARAVOOR SOUTH MURI, KOOTHUPARAMBU, REP. BY POWER OF ATTORNEY HOLDER NARAYANAN JAYAPRASAD.

4. KARTHIYAYANI LALITHABHAI, RENU BHAVAN, THAZHATHU BHAGOM, BHARANIKKAVU, PUNALUR.

5. NARAYANAN JAYAPRASAD OF -DO- -DO-

6. MATHEW VARGHESE ALIAS ACHANKUNJU, SANTHA BHAVAN, MOONNALAM, PERINGINADU ADOOR.

7. PURUSHOTHAMAN SREEKUMAR, REMYA BHAVAN, PANNIVIZHA, ADOOR.

8. CHATHUKUTTY SOMANATHAN, CHAMALIL VEEDU, NARAVOOR SOUTH, KOOTHUPARAMBU, REP. BY POWER OF ATTORNEY HOLDER-NARAYANAN JAYAPRASAD, RENU BHAVAN, THAZHATHU BHAGOM, BHARANIKKAVU, PUNALOOR.

R5 BY ADV. SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K. PADMANABHAN NAIR ,J**

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**C.M.A.No.157 of 2001**

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**Dated, this the 6th day of September, 2007**

**JUDGMENT**

This Civil Miscellaneous Appeal is filed against the orders passed by the learned District Judge, Pathanamthitta dismissing I.A.Nos.701/1999, 713/2000 and 714/2000 in A.S.No.14/1999.

2. Appellant was the plaintiff in O.S.No.503/1996 on the file of the Munsiff's Court. Suit was dismissed on 19.12.1998. Appellant filed A.S.No.14/1999 before the District Court along with I.A.No.91/1999 to condone the delay in filing the appeal. That petition to condone delay came up for hearing on 10.9.1999. On that day the same was dismissed on the ground that defects not cured nor fresh steps taken. The appeal was also dismissed as barred by limitation. Appellant filed I.A.No.701/1999 for restoration of the appeal as well as the delay petition. That petition was posted to 6.12.2000. On that day the appellant and counsel were absent. So that I.A. was dismissed. Subsequently the appellant filed I.A.Nos.713/2000 and 714/2000. I.A.No.714/2000 was filed under Order XLI Rule 19 of CPC to restore the appeal dismissed for default. The prayer in I.A.No.713/2000 was to condone the delay of 270 days in filing I.A.No.714/2000. I.A.No.701/1999 was a composite petition for restoring the appeal as well as the delay petition. That application was dismissed and the appeal was dismissed as barred by limitation. The appellant had not offered any

valid explanation for not curing the defects in I.A.No.701/1999. She had also not offered any proper explanation for not filing I.A.No.714/2000 within the time allowed by law. So the finding of the lower appellate court that the appellant has not offered any explanation for the delay is only to be confirmed. But I make it clear that this judgment will not be a bar for the appellant to file Second Appeal against the decree and judgment passed in the appeal and raise all the grounds in that appeal. This Civil Miscellaneous Appeal is without any merit and it is liable to be dismissed.

In the result, Civil Miscellaneous Appeal is dismissed. No costs.

**K. PADMANABHAN NAIR**
**JUDGE**

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K.PADMANABHAN NAIR, J.

C.M.A.No.157 of 2001

JUDGMENT

6th September, 2007.